

THE HONORABLE MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

SUNTRUST BANKS, INC., a Georgia  
Corporation,

Plaintiff,

vs.

BE YACHTS, LLC, a Washington Limited  
Liability Company, along with its officers,  
shareholders, executives and directors, and  
EDWARD BALASSANIAN, individually.

Defendants.

IN ADMIRALTY

Case No.: 2:18-CV-00840

**PRETRIAL ORDER**

**JURISDICTION**

This is an admiralty and maritime claim within the meaning of Rule 9(h). This Court has original jurisdiction over this matter in accordance with the provisions of 46 U.S.C. §31325(c). Because Plaintiff and Defendants are all citizens or legal entities residing in different states, and the amount in controversy is in excess of \$75,000, this Court has diversity jurisdiction over this civil action under 28 U.S.C. §1332. This Court also subject matter jurisdiction over this admiralty action for breach of a First Preferred Ships Mortgage under 28 U.S.C. §1333.

**PRETRIAL ORDER**

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims:

1. Breach of Contract

The plaintiff will assert at trial the following affirmative defenses:

1. Failure to state a claim for which relief can be granted;
2. Full performance of contractual and statutory duties.

The defendant will pursue the following affirmative defenses and/or counterclaims:.

Counterclaims

1. Failure to Hold a Commercially Reasonable Sale under RCW 62A.9A-610 and related statutes.
2. Damages and Rights Under RCW 62A.9A-625 and related law.

Affirmative Defenses

1. **Failure to Mitigate Damages.** Plaintiff has a duty to mitigate its damages, if any; to the extent it has not, its damages, if any, should be barred or reduced accordingly.
2. **Offset/Setoff.** Plaintiff's claims are barred, in whole or in part, by the doctrine of offset or set-off.
3. **Unclean Hands.** Plaintiff's claims fail, in whole or in part, based on the doctrine of clean hands.

ADMITTED FACTS

The following facts are admitted by the parties:

1. On January 29, 2013 Defendants executed a Marine Installment Note.

PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

2. Defendants agreed to repay \$1,800,000.00 to SunTrust for the funds it provided for the purchase a 2012 Sunseeker International Manhattan 63 Motor Yacht.
3. SunTrust paid \$1,800,000 to Rick Obey & Associates on behalf of Defendants to fulfill their obligations under the purchase contract for the Vessel.
4. The loan was also secured by a First Preferred Ship Mortgage which Defendants executed.
5. Defendant Balassanian also signed a Borrowing and Guaranty Resolution personally guaranteeing the debt.
6. The Marine Installment Note, First Preferred Ship Mortgage, and Borrowing and Guaranty Resolution are all valid contracts.
7. Defendants agreed to repay the \$1,800,000.00 they borrowed from SunTrust in 240 monthly installments of \$11,632.02 commencing on March 1, 2013.
8. Defendants defaulted on their obligations in late 2014 and the Vessel was repossessed on February 3, 2015.
9. After Defendants redeemed their default in February of 2015, Defendants again began to miss payments.
10. Defendants defaulted under the terms of the Installment Note on November 16, 2015 and failed to correct the default.
11. As a result of Defendants' default, SunTrust exercised its right to accelerate the loan.
12. The vessel at issue ("Just Be") was repossessed on February 12, 2016.
13. On or about February 17, 2016 SunTrust mailed a letter to Defendants which stated in the subject line "Notice of Our Plan To Sell Property".
14. SunTrust received a letter from Fred Robinson dated February 24, 2016.
15. SunTrust or its agents commissioned Bill Evans of Blue Water Marine Surveyors to perform a survey on the Just Be on or about February 23, 2016.
16. SunTrust or its agents commissioned Charles Solarek of CWS Maritime Services to

PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

perform a survey on the Just Be on or about June 9, 2016.

17. In January 2017, Dean Jones commissioned a pre-purchase condition and valuation survey of the Just Be by Bill Evans of Blue Water Marine Surveyors.

18. On or about March 24, 2017 SunTrust mailed a letter to Defendants which stated in the subject line “Explanation of Calculation of Deficiency or (Surplus)”.

19. Defendants did not pay the deficiency stated in the March 24, 2017 letter from SunTrust.

20. SunTrust Financed the loan for Dean Jones to buy the Just Be.

21. Edward Balassanian used Just Be as a principal dwelling for a period of time.

22. Rick Young is not licensed as a vessel dealer in Washington State.

23. Rick Young has sold fewer than 5 boats in Washington State in 2016.

#### ISSUES OF LAW

The parties agree on the following issues of law:

1. Whether SunTrust was damaged by Defendants’ breach of the installment note.
2. Whether SunTrust mitigated its alleged damages.
3. Whether SunTrust violated RCW 62A.9A-610, which mandates that every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable.
4. Whether Balassanian is entitled to damages under RCW 62A.9A-625.
5. Whether the Just Be was a “consumer good” as referenced in RCW 62A.9A-625

Plaintiff contends that the following are additional issues of law to be determined by the court:

1. The issues relevant to whether SunTrust violated RCW 62A.9A-610 are:

#### PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

- a. Whether SunTrust made efforts to reach segments of the public reasonably expected to have an interest in bidding on the vessel;
  - b. whether SunTrust engaged in an analysis to determine a fair market price for the vessel.
  - c. whether the sale conformed to commercially reasonable standards; and
  - d. whether the means and methods of the disposition were overall reasonable under the circumstances.
2. Whether damages under 62A.9A-625(c)(2) are permissive.
  3. Whether the phrase “credit service charge” in RCW 62A.9A-625(c)(2) refers to the estimated “Finance Charge” at time of loan origination or accrued interest at the time of loan charge off.
  4. Whether Defendant’s counterclaims fail to state a claim for relief.

Defendant contends that the following are the additional issues of law to be determined by the court:

Defendant agrees that whether SunTrust made efforts to reach segments of the public reasonably expected to have an interest in bidding on the vessel and whether SunTrust engaged in an analysis to determine a fair market price for the vessel are part of the analysis, but are not in isolation the only metrics to be considered in determining commercial reasonableness. Defendants contend that additional issues of law to be determined by the Court are:

1. Whether SunTrust used its best efforts to sell the collateral for the highest price.
2. Whether SunTrust acted like a fiduciary in its handling of the marketing and disposition of the collateral.
3. Whether SunTrust has rebutted the presumption that the value of the collateral is equal to the outstanding debt.

#### PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

4. Whether SunTrust has met its burden of proof.

5. Whether SunTrust's conduct constitutes unclean hands and/or a basis for an equitable offset.

#### EXPERT WITNESSES

(a) Each party shall be limited to one expert witness (per LCR 43(j)) on the issues of commercial reasonableness. Plaintiff contends that under the local rule, Defendants are limited to one expert for trial on this entire issue. Defendants contend that they are entitled to present expert testimony on the issue from the expertise of a vessel broker and from the expertise of a marine surveyor.

(b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Plaintiff: None.

(2) On behalf of Defendants:

1. Ron Reisner  
R. Reisner & Associates, LLC  
1315 Clarabelle Drive  
Morro Bay, CA 93442

Will testify. Mr. Reisner is expected to testify regarding the opinions in his expert report and supplementary report and topics discussed during his deposition.

2. Neil Emmott  
2711 NE 14th Street  
Fort Lauderdale, FL  
33304

Will testify. Mr. Emmott is expected to testify regarding the opinions in his updated expert report and topics discussed during his deposition.

#### OTHER WITNESSES

#### PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

1. The names and addresses of witnesses, other than experts, to be used by each party at the  
2. time of trial and the general nature of the testimony of each are:

3. (a) On behalf of plaintiff:

4. 1. Buck Fowler – Managing Member  
5. Marine Lenders Services, LLC, dba: Waypoint Marine Group  
6. Jacobson Terminals, 5350 30th Ave NW  
7. Seattle, WA 98107

8. Will Testify. Mr. Fowler is expected to testify about the recovery, storage, marketing, sale,  
9. and liquidation of Balassanian's Motor Yacht JUST BE.

10. 2. Rick Young – National Sales Director  
11. Denison Yacht Sales, Inc.  
12. 850 N.E. 3<sup>rd</sup> Street, #205  
13. Dania Beach, FL 33004

14. Will Testify. Mr. Young is expected to testify about the recovery, storage, marketing, sale,  
15. and liquidation of Balassanian's Motor Yacht JUST BE.

16. 3. Brandy Thore – Repossession Coordinator Manager  
17. SunTrust Banks, Inc.  
18. c/o International Maritime Group, PLLC  
19. 800 Fifth Ave, Suite 4100 Seattle, WA 98104  
20. Dania Beach, FL 33004

21. Will Testify. Ms. Thore is expected to testify about the recovery, repair, storage, and  
22. liquidation of Balassanian's Motor Yacht JUST BE.

23. 4. Don Beaumont – Owner  
24. Nielson Beaumont Marine, Inc.  
25. 2420 Shelter Island Drive  
26. San Diego, CA 92106

Will Testify. Mr. Beaumont is expected to testify about the recovery, repair, storage, and  
liquidation of Balassanian's Motor Yacht JUST BE.

PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

(b) On behalf of defendant:

1. Edward Balassanian  
c/o Anna Johnsen Law  
1420 Fifth Ave, Suite 2200  
Seattle, WA 98101

Will testify. Mr. Balassanian is expected to testify about Be Yachts, LLC, how Just Be was used, facts about Just Be, and his observations of the repossession, storage, marketing, and sale of Just Be.

2. John Brandenfels  
12514 NE 65<sup>th</sup> St.  
Kirkland, WA 98033  
(425) 440-1727

Will testify. John Brandenfels is expected to testify about how Just Be was used, facts about Just Be, and his observations of the repossession, storage, marketing, and sale of Just Be.

3. Fred Robinson  
11027 Marine View Dr. SW  
Seattle, WA 98146

Will testify. Fred Robinson is expected to testify about his interactions with SunTrust, Nielsen Beaumont, and the vendors involved in this case. He is also expected to testify about his observations of the repossession, storage, marketing, and sale of Just Be.

4. Catheryn Carpenter  
6503 128<sup>th</sup> Pl SW  
Edmonds, WA 98026  
(608) 661-3064

PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*



May testify. Ms. Carpenter is expected to testify about Be Yachts, LLC, how Just Be was used, facts about Just Be, and her observations of the repossession, storage, maintenance, marketing, and sale of Just Be.

5. Nancy Moore  
126 SW 148th Street  
Suite C100-245  
Seattle, WA 98166

May testify. Ms. Moore is Edward Balassanian's accountant and has been since 2006. She has entered every value related to his businesses. She will testify that the Just Be was never used for commercial purposes and the Be Yachts, LLC never carried on any business or generated any income. If it is determined prior to trial that Just Be is a consumer good, then Mrs. Moore will not testify.

6. David Spencer  
One Liberty Plaza  
23rd Floor  
New York, NY 10006

May testify. David Spencer is Edward Balassanian's tax attorney and has knowledge of Mr. Balassanian's tax history. He is expected to testify that Be Yachts, LLC was a pass-through entity that generated no income and that Just Be was never treated as a commercial asset or used in relation to any of the businesses with which Mr. Balassanian has been involved. Mr. Spencer will also testify how an asset would appear on tax returns if it were used as a business asset. If it is determined prior to trial that Just Be is a consumer good, then Mr. Spencer will not testify.

#### EXHIBITS

Each exhibit is identified below with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag:

#### PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

<b>Plaintiff's Exhibits</b>					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	ST Marine Installment Note, Disclosure and Security Agrmt.	Stipulated	Stipulated		
2	1st Preferred Ship Mortgage	Stipulated	Stipulated		
3	ST Borrowing and Guaranty Resolution	Stipulated	Stipulated		
4	Bill of Sale and Transfer of Title	Stipulated	Stipulated		
5	USCG Certificate of Documentation	Stipulated	Stipulated		
6	Manufacturer's Statement of Origin as to Sunseeker Manhattan 63	Stipulated	Stipulated		
7	2/18/15 ST Notice of Plan to	Stipulated	Stipulated		

**PRETRIAL ORDER***Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

	Sell to Be Yachts & Balassanian				
8	BUCValupro Report dated 2/3/15	Stipulated	Stipulated		
9	2/11/16 Boat Condition Report	Stipulated	Stipulated		
10	3/24/17 Calculation of Deficiency to Balassanian	Stipulated	Stipulated		
11	Katherine (NB) email to Brandy re negotiating offers to \$1.1M	Stipulated	Stipulated		
12	9/20/16 Email from R. Young (Silver Seas) attaching offers received	Stipulated	Stipulated		
13	9/19/16 \$1.05M Offer (Dean Jones)	Stipulated	Stipulated		
14	7/22/16 \$1.1M Offer	Stipulated	Stipulated		

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

15	9/15/16 \$1.0M Offer	Stipulated	Stipulated		
16	8/26/16 Emails re taking Just Be to Seattle Boat Show and approval thereof	Stipulated	Stipulated		
17	6/28/16 Email and offer for \$1.1M; Brandy counter at \$1.35M.	Stipulated	Stipulated		
18	6/15/16 Email from Brandy to reduce listing price to \$1.4M	Stipulated	Stipulated		
19	4/26/16 \$1.35M Final Offer	Stipulated	Stipulated		
20	4/28/16 Email from Brandy accepting \$1.35M offer	Stipulated	Stipulated		
21	4/22 - 4/28/18 Emails re \$1.318M	Stipulated	Stipulated		

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

	counter-offer and requesting survey and questions re other showings				
22	4/22/16 Email and \$1.255M Offer	Stipulated	Stipulated		
23	3/17/16 \$1.0M Offer	Stipulated	Stipulated		
24	3/17/16 Email from Brandy re initial pricing of Just Be at \$1.7M	Stipulated	Stipulated		
25	2/19/16 Email from Brandy approving Marine Surveyor	Stipulated	Stipulated		
26	3/8/16 Email from Katherine (NB) re inspection of bottom and cleaning as needed	Stipulated	Stipulated		

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

27	3/14/16 Email from Don Beaumont re Just Be Valuation	Stipulated	Stipulated		
28	3/7/16 Blue Water Marine Survey	Stipulated	Stipulated		
29	6/9/16 CWS Maritime Services Survey	Stipulated	Stipulated		
30	Nielsen Beaumont, Waypoint and repair Invoices (dated 4/1/16 - 3/14/17)	Stipulated	Stipulated		
31	SunTrust Master Services Agreement with Nielsen Beaumont dated 10/23/14	Stipulated	Stipulated		
32	SunTrust Statement of Work with Nielsen	Stipulated	Stipulated		

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

1.		Beaumont dated				
2.		11/18/14				
3.	33	Initial Report of	Stipulated	Stipulated		
4.		the entity Be				
5.		Yachts, LLC,				
6.		filed on January				
7.		28, 2013 with the				
8.		Washington				
9.		Secretary of State				
10.	34	<i>Just Be</i> Posting	Stipulated	Stipulated		
11.		and Sold Info on				
12.		Denison				
13.		Yachting Online,				
14.		printout dated				
15.		11/21/18				
16.	35	2/17/16 Invoice	Stipulated	Stipulated		
17.		from Nielsen				
18.		Beaumont to				
19.		SunTrust				
20.	36	5 photos of <i>Just</i>	Stipulated	Stipulated so long as		
21.		<i>Be</i> taken after		redacted		
22.		repossession				
23.	37	Boat Condition	Stipulated	Stipulated		
24.		Report by				
25.		Waypoint/Marine				

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

1.		Lender Services				
2.		2/12/16				
3.	38	Assignment	Stipulated	Stipulated		
4.		Details for Just				
5.		Be dated 1/30/15				
6.		and 2/11/16				
7.	39	Nielsen	Stipulated	Stipulated		
8.		Beaumont				
9.		Involuntary				
10.		Recovery dated				
11.		2/12/16				
12.	40	Nielsen	Stipulated	Stipulated		
13.		Beaumont				
14.		Release of				
15.		Personal				
16.		Property dated				
17.		2/23/16; and				
18.		receipts dated				
19.		2/23/16, 2/13/16,				
20.		2/19/16				
21.	41	Full download of	Stipulated	Stipulated		
22.		all SunTrust				
23.		RMS Notes				
24.	42	Publicly	Stipulated	Stipulated		
25.		available				

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*



1.		screenshots of				
2.		Superyacht Sales				
3.		and Charter				
4.		vessel docks and				
5.		moorage				
6.	43	Publicly	Stipulated	Stipulated		
7.		available				
8.		screenshots of				
9.		Waypoint Marine				
10.		Docks				
11.	44	Yatco Newsletter	Stipulated	Stipulated		
12.		Yacht Broker				
13.		Agent Fees				
14.		Explained				
15.	45	Comps from May	Stipulated	Stipulated		
16.		25, 2020				
17.	46	Yachtworld	Stipulated	Stipulated		
18.		Website Articles				
19.	47	Rick Obey &	Stipulated	Stipulated		
20.		Associates				
21.		Buyer's closing				
22.		statement dated				
23.		1/1/13				

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

48	January 2017 Blue Water Marine Survey	Not Stipulated	Not Stipulated	D	
49	Defendants' Discovery Responses and Supplemental Discovery Responses	Not Stipulated	Not Stipulated	D	

Because there is a numbering discrepancy for exhibits numbered 32 and higher, Defendants reserve the right to object if the exhibit actually offered is different from Plaintiff's prior representations.

<b>Defendant's Exhibits</b>						
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted	
101	Email from Fred Robinson and Nielsen Beaumont's Response	Stipulated	Stipulated			
102	Email from Brent Martin and Nielsen Beaumont's Response	Stipulated	Stipulated			
103	List of boats for sale at WayPoint Marine	Stipulated	Stipulated			
104	Leases and Office Correspondence	Stipulated	Stipulated			

**PRETRIAL ORDER**

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

1.	105	Survey of Vessel done on behalf of Dean Jones	Stipulated	Stipulated		
2.						
3.	106	Be Yachts LLC documents from the WA SOS	Stipulated	Stipulated		
4.						
5.	107	Purchase document showing price of Vessel was \$2,461,800.00	Stipulated	Stipulated		
6.						
7.						
8.	108	Publicly available screenshots regarding Nielsen Beaumont	Stipulated	Stipulated		
9.						
10.	109	Emails between Cathryn Carpenter and Buck Fowler	Stipulated	Stipulated		
11.						
12.	110	Transaction Summary Calculating Deficiency	Stipulated	Stipulated		
13.						
14.	111	SunTrust Record of Payment and Fees	Stipulated	Stipulated		
15.						
16.	112	Higher quality images of produced comps	Stipulated	Stipulated		
17.						
18.	113	Print Out from SunTrust Website	Stipulated	Stipulated		
19.						
20.	114	Article from Denison Yachting	Stipulated	Stipulated		
21.	115	Documents from Buck Fowler's fraud case	Stipulated	Disputed	C, R, P, E, 401, 403, 404, 608(b), 802	
22.						
23.						
24.						
25.						
26.						

## PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

116	Photos of Waypoint Marine	Stipulated	Stipulated		
117	Ron Reisner's CV	Stipulated	Stipulated		
118	SunTrust's Discovery Responses Pleading	Stipulated	Stipulated		
119	SunTrust's Supplemental Discovery Responses Pleading	Stipulated	Stipulated		
120	Invoices and Correspondence showing maintenance and upgrades	Stipulated	Stipulated		
121	Ron Reisner's Expert Report	Stipulated	Stipulated		
122	Ron Reisner's Supplemental Expert Report	Stipulated	Disputed	N	
123	Neil Emmott's Updated Expert Report	Stipulated	Disputed	N	
124	Correspondence sent by Fred Robinson	Stipulated	Stipulated		
125	4 Screen Shots of SunTrust RMS Notes	Stipulated	Stipulated		
126	Email from Don Beaumont to Brandy Thore (ST0066)	Stipulated	Stipulated		
127	Neil Emmott's First Expert Report	Stipulated	Stipulated		

The Parties' Objection Code:

**PRETRIAL ORDER**

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*

C	Character Evidence Not Admissible to Prove Conduct
R	Relevance
P	Probative value outweighed by unfair prejudice and confusing the issues
E	Extrinsic evidence not admissible to prove specific instances of witnesses conduct
N	The report is not fairly characterized as a supplemental report; it is a new report based on entirely different data and was provided after the deadline to provide expert witness reports.
D	Authenticity and admissibility cannot be determined because the exhibit has not been produced in its final form after request by counsel.

## ACTION BY THE COURT

- (a) This case is scheduled for trial without a jury on June 15, 2020, at 9:00 a.m.
- (b) Trial briefs shall be submitted to the court on or before June 5, 2020.
- (c) Pretrial conference to be held on June 10, 2020 at 9:30 a.m.

This order has been approved by the parties as evidenced by the signatures of their counsel.

This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 15th day of June, 2020.



MARSHA J. PECHMAN  
UNITED STATES DISTRICT JUDGE

FORM APPROVED

/s/Anna Johnsen

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PRETRIAL ORDER

*Suntrust Banks, Inc. v. BE YACHTS LLC, et al.*